

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

ANDREW C FAUGSTAD
Claimant

APPEAL NO. 11A-UI-13498-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ADVANCED COMPONENT
TECHNOLOGIES INC**
Employer

OC: 09/198/11
Claimant: Respondent (5-R)

871 IAC 24.1(113) – Other Separations

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 12, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on November 10, 2011. Claimant Andrew Faugstad participated. Tim Woodle, human resources and safety manager, represented the employer. Exhibits One and A through G were received into evidence.

ISSUE:

Whether the claimant separated from the employment for a reason that makes her ineligible for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Andrew Faugstad was employed by Advanced Component Technologies, Inc., as a full-time production worker from August 2010 and last performed work for the employer on March 11, 2011. On Sunday, March 13, 2011, Mr. Faugstad suffered a rotator cuff injury to his left shoulder in a non-work-related slip and fall accident. On March 14, Mr. Faugstad notified the employer of his injury and provided medical documentation that took him off work until he could obtain further evaluation and treatment. Mr. Faugstad commenced an approved leave of absence on March 14, 2011. On March 28, the employer approved Mr. Faugstad for a medical leave of absence not to exceed 180 days. On March 30, the employer's third-party disability provider approved Mr. Faugstad for short-term disability benefits. On May 13, Mr. Faugstad underwent surgery on his shoulder. At the end of May, Mr. Faugstad started six weeks of physical therapy. Mr. Faugstad maintained contact with the employer as required.

On August 31, Tim Woodle, human resources and safety manager, reminded Mr. Faugstad that his approved leave of absence was set to expire in the immediate future. Mr. Faugstad desired to return to work, but had not been released to return to work without restrictions. The employer would not allow him to return to work with restrictions. Mr. Faugstad continued on an approved medical leave of absence until September 10, 2011, at which time the employer ended his employment because he had not yet been released to return to work without restrictions.

Mr. Faugstad then established a claim for unemployment insurance benefits that was effective September 18, 2011.

Mr. Faugstad had provided medical documentation regarding his medical restrictions. Effective May 13, 2011, Mr. Faugstad was restricted from performing any work. Effective June 24, 2011, Mr. Faugstad's doctor continued the total restriction from performing any work. Effective August 4, 2011, Mr. Faugstad was restricted from any use of his left arm. Effective September 1, 2011, Mr. Faugstad was restricted to lifting no more than 15 pounds from floor to table top, no more than 10 pounds from table top to shoulder height, and was wholly restricted from performing any lifting above his shoulders. Effective September 1, Mr. Faugstad was released to return to work with the above restrictions. Effective October 13, 2011, Mr. Faugstad was restricted to lifting no more than 20 pounds from floor to table top, no more than 15 pounds from table top to shoulder height, and continued to be wholly restricting from any lifting above shoulder height. In addition, Mr. Faugstad was restricted from any use of his left arm above his shoulder and was restricted from reaching with his elbow greater than 4 to 6 inches from his body for greater than 2-4 hour per day. The restrictions were to remain in place until an appointment to occur two months later.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113), provides as follows:

All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. **Layoffs.** A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. **Quits.** A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. **Discharge.** A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. **Other separations.** Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

The evidence in the record establishes a separation from employment that falls within that category known as "other separations." Mr. Faugstad was willing to work, but was unable to

return to the work because he could not meet the physical demands of the employment. The employer allowed the maximum leave of absence period under its written policy and deemed the employment done only when Mr. Faugstad was still unable to return to the employment for medical reasons. Because Mr. Faugstad did not voluntarily quit and was not discharged for misconduct in connection with the employment, his separation from the employment would not disqualify him for unemployment insurance benefits. Effective September 18, 2011, Mr. Faugstad is eligible for benefits, provided he is otherwise eligible. In addition, due to the nature of the separation, the law allows for the employer's account to be charged for unemployment insurance benefits paid to Mr. Faugstad.

The evidence raises additional issues that must be addressed as part of a remand to the Claims Division at Iowa Workforce Development. The first issue to be investigated and adjudicated on remand is whether Mr. Faugstad meets the legal definition of being able to work and available for work since he established his claim for benefits. The second issue to be investigated and adjudicated is whether Mr. Faugstad is receiving periodic compensation that is deductible from his unemployment insurance benefits.

DECISION:

The Agency representative's October 12, 2011, reference 01, decision is modified as follows. The claimant's separation falls into the category of "other separations" and was due to his inability to meet the physical requirements of the employment. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

This matter is remanded to the Claims Division for investigation and adjudication of whether the claimant has been able and available for work since establishing his claim for benefits and whether the claimant has received periodic compensation that is deductible from his unemployment insurance benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw